

HOUSE BILL 3196
By Cobb

AN ACT to amend Tennessee Code Annotated, Title 65,
Chapter 6, and to enact the "Tennessee Land
Injury Liability Act."

WHEREAS, the General Assembly has recently learned of the significant legal problems encountered by Tennessee landowners which suddenly and unexpectedly arise between them and any of the railroads that operate in this state when a train carrying hazardous cargo derails and hazardous material is thereby released onto lands not belonging to the railroad; and

WHEREAS, in such cases there is almost always a great economic disparity between the individual landowner and the particular railroad involved; and

WHEREAS, most of the railroads which operate in this state are multi-billion dollar corporations headquartered in distant other states of this nation; and

WHEREAS, when a derailment of a train carrying hazardous cargo occurs and hazardous material is thereby released onto the lands of a citizen of this state, then the individual landowner is usually at a great disadvantage in trying to obtain assurance to his personal satisfaction that a full recovery of all hazardous material which spilled onto his land has been achieved and that no such hazardous material waste remains thereon; and

WHEREAS, testing for such possible remaining hazardous material can cost hundreds of thousands of dollars, and if such tests prove positive, then the additional hazardous waste recovery costs can amount to hundreds of thousands of dollars more; and

WHEREAS, such costs are, of course, in addition to the other ordinary and usual costs of a train derailment cleanup; and

WHEREAS, if a railroad refuses to incur such additional costs and the landowner fears that hazardous material still remains on his land, then the individual landowner may then have no practical recourse to a resolution of this dispute; and

WHEREAS, legal action initiated by a landowner relying upon traditional negligence and/or other tort causes of action can take years to litigate, can require thousands of dollars to prepare for trial, and places the burden of proof upon the landowner plaintiff to first establish the full amount of the damages for which he seeks recovery - something that a landowner acting under such legal theories will not be able to do without himself first incurring such hazardous material testing costs; and

WHEREAS, a railroad thus has a great economic advantage in such circumstances to coerce a settlement of such a dispute upon its own terms; and

WHEREAS, such an outcome is usually not only adverse to the legitimate interests of an individual landowner, but is also adverse to the general interests of the people of the state of Tennessee in protecting and preserving the environmental quality of the lands of this state; and

WHEREAS, the general assembly, as hereinafter provided, has determined that the public policy of this state in the aforementioned circumstances shall be "to level the playing field" between the landowners of this state and the railroads which operate in this state when a derailment of a train carrying hazardous cargo occurs anywhere in this state and any hazardous cargo of the train is thereby released onto any lands not belonging to the railroad; now, therefore:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Land Injury Liability Act".

SECTION 2. Tennessee Code Annotated, Title 65, Chapter 6, is amended by adding SECTION 3 through SECTION 10 as a new, appropriately designated part:

SECTION 3.

(a) Immediately following the occurrence anywhere in this state of any derailment of any train onto lands not belonging to the railroad, the owner of such lands shall, at the owner's own risk, have complete, continuous, and unimpeded access to the derailment site despite such derailment and the hazards attendant thereto. Any landowner accessing any such derailment site may photograph, video, or by other method document or record the manner and extent of the train derailment, and the derailment of the train cargo, onto the landowner's land.

(b) No law enforcement officer or emergency response officer, nor any law enforcement agency or emergency response agency of this state or any county or municipality of this state, shall deny access to any landowner who, at the landowner's own risk, desires to enter upon the person's own lands to photograph, video, or by other method document or record the manner and extent of a train derailment, and the derailment of the train cargo, thereon.

(c) A landowner may enforce such right to immediately enter upon the person's own lands at such person's own risk under the aforesaid circumstances by obtaining injunctive relief against any or all such officers or agencies that seek to prevent or prohibit the landowner's entry upon the person's own lands. Such injunctive relief may be obtained by the owner of any such lands from any court of record for any county in which such lands lie.

SECTION 4. When a derailment of a train carrying hazardous cargo occurs anywhere in this state and any hazardous cargo of the train is thereby released onto any lands not belonging to the railroad, the entire expense of all remedial and recovery action shall be the legal obligation of the carrying railroad and for which it shall be strictly liable to the landowner, without regard to the fault of the railroad. Such expenses shall include:

(1) The costs of testing to determine the presence, and the continuing presence, of any such hazardous material; and

(2) All hazardous waste removal costs.

SECTION 5.

(a)(1) In addition to the usual and ordinary compensatory damages allowed to a landowner for the loss in value of his real property, the measure of damages for injury to land from a release of hazardous material thereupon due to a train derailment shall also include:

(A) All of the expenses of inspection and testing of the land to determine the presence of any hazardous material which may remain thereon and the scope of injury to the land; and

(B) All hazardous waste removal costs.

(2) The carrying railroad whose train derailed shall be strictly liable to the landowner for all such damages without respect to its causation of any such damages.

(b) Any assignment of fault which a railroad may seek to comparatively make between itself and any other person for any such damages shall not include the landowner.

SECTION 6. The measure of damages for injury to land from a release of hazardous material thereupon due to a train derailment shall also include all of the following costs even though such costs may exceed the full fair market value of the land immediately prior to the derailment thereon:

(1) Costs of inspection and testing to determine the existence and scope of injury to the land; and

(2) Costs of hazardous waste removal.

SECTION 7.

(a) No inspection or testing to determine the existence and scope of injury to any land resulting from a release of hazardous material thereupon due to a train derailment, or the removal of any hazardous waste from such land, shall be made by the carrying railroad without first obtaining the written approval of the landowner to do so.

(b) The commissioner of environment and conservation, or the commissioner's designee, shall assist any landowner so injured who, in writing, requests technical assistance from the department with respect to inspection or testing to determine the existence and scope of injury to any land resulting from a release of hazardous material thereupon due to a train derailment or with respect to the removal of any hazardous waste from such land.

SECTION 8. This part shall apply to any civil action between a landowner and any railroad which operates in this state that includes a claim for injury to land in which the effective date of this act occurs before the trial of the cause regardless of when the civil action is commenced.

SECTION 9. This part shall not affect rights and duties that matured or penalties that were incurred before the effective date of this act.

SECTION 10. The provisions of this part are declared to be remedial in nature and the provisions of this part shall be liberally construed to effectuate its purposes.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.